



March 22, 2017

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington DC 20554

Re: Notice of *Ex Parte* Presentation, CG Docket No. 02-278

Dear Ms. Dortch:

This *Ex Parte* Notice relates to a meeting on March 21, 2017 between me, Jonathan Schwantes and Maureen Mahoney (on the phone) of Consumers Union, and David Grossman of Commissioner Clyburn's office.

During this meeting we discussed the following topics:

1. **Opposition to Reconsideration of Budget Regulations.** The Opposition to the student loan servicers' Petition for Reconsideration to the Budget Rules filed by the National Consumer Law Center on behalf of its low-income clients and the seventeen national and state advocacy organizations.<sup>1</sup> We explained that the Budget Rules are fully consistent with the Commission's authority. In particular, we pointed out that --
  - a. As the Telephone Consumer Protection Act (TCPA) is a consumer protection statute, the Commission was tasked with balancing the necessary protections for consumers from abusive robocalls with allowing some unconsented-to calls to collect debt owed the federal government, and the Budget Rules illustrates a perfect equilibrium between the competing goals of the amended Act.

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<sup>1</sup>Opposition to Petition for Reconsideration Submitted by Great Lakes Higher Educ. Corp. et al. by the National Consumer Law Center, on behalf of its low-income clients, et al., In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278 (filed Feb. 1, 2017), *available at* <https://ecfsapi.fcc.gov/file/10201570711139/Opposition%20to%20Petition%20for%20Reconsideration.pdf>.

<sup>2</sup> In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 30 FCC Rcd. 7961, 8006-8011 ¶¶ 85-93 (2015).

- b. The Budget Rules' limitation of three robocall calls per month falls squarely within the Commission's discretionary authority provided by Congress in 47 U.S.C. § 227(b)(2)(H) to "limit the number ... of calls." In setting this number, the Commission recognized both the harassment that consumers suffer from debt collectors, and the particular annoyance and invasion of privacy caused by autodialed calls.
- c. In addition to explicitly authorizing the Commission to limit the number of calls, Congress provided the Commission with the broader mandate in § 301(b) of the Budget Act to issue regulations implementing the change in the statute. In order for the mandate in § 301(b) to have meaning (as statutory construction requires), it must provide some additional regulatory authority to the Commission beyond the ability to limit the number of calls; otherwise, the statute would not need implementing by regulations; the statutory directive would be self-executing.
- d. Some of the protections in the rules, such as a) requiring that call attempts be counted even when not answered; b) prohibiting calls to parties other than the debtor; and c) allowing only one wrong number call to reassigned numbers, all fall squarely within a fair reading of the Commission's statutory authorization under the Budget Act to limit the number of calls.
- e. The regulatory authority provided the Commission in § 301(b), as well as the overarching consumer protection purposes of the TCPA, support the consumer protections in the rules that go beyond the limits on the number of calls, such as a) requiring that callers provide notice of a right to stop the calls, and abide those requests; c) restrict the times during which the calls can be made;
- f. The entire point of limiting robocalls is to address the annoyance and invasion of privacy they cause. The ringing telephone triggers the TCPA's purpose of protecting consumers from that annoyance and invasion of privacy, not just when the consumer chooses to answer the phone. The Budget Rule's application of the call limit to live contacts rather than only to attempts is also fully consistent with the longstanding interpretation of TCPA protections to measure that annoyance not only in terms of when the consumer has actually answered the phone.
- g. The Commission has properly determined that the words "solely to collect a debt" in the amendment to the TCPA authorizing these calls, only permits collectors to make unconsented-to calls to the debtor, not to anyone else. The collectors' wishes to be able to call every "endorser, relative, reference, and entity" in the consumer's file do not meet the statutory requirement of calls "solely to collect the debt."
- h. The application of the rule on reassigned numbers from the 2015 Omnibus Order<sup>2</sup> to these unconsented-to calls is essential to protect consumers from robocalls once they have a telephone number reassigned from someone else.

2. **Broadnet.** We reiterated that if the Budget Rules are reconsidered then the Broadnet Ruling should also be reconsidered,<sup>3</sup> as the two issues are inextricably linked.

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<sup>2</sup> In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 30 FCC Rcd. 7961, 8006-8011 ¶¶ 85-93 (2015).

<sup>3</sup> NCLC's Petition for Reconsideration of the Broadnet Declaratory Ruling and Request for Stay Pending Reconsideration, CG Docket No. 02-278 (filed July 26, 2016) is available at <https://ecfsapi.fcc.gov/file/10726059270343/NCLC%20Petition%20for%20Reconsideration%20of>

3. **Robocall Strike Force.** We express our hopes that the Commission would continue the work of the industry-led Robocall Strike Force assembled by former Chairman Wheeler last summer. The Strike Force last met in October, 2016 and is expected to meet again in April of this year. We strongly support the Commission's efforts to combat robocalls, and that includes industry efforts as part of the Strike Force.
4. **MBA Petition for Exemption.** We urged that this petition should be completely rejected and noted that mortgage servicers routinely and blatantly violate the Telephone Consumer Protection Act (TCPA), harassing consumers by making dozens, and sometimes hundreds, of unwanted robocalls, even after repeated requests to stop. We pointed out the numerous examples of these continuing problematic violations excerpted in our comments opposing the petition.<sup>4</sup> Additionally, while we do not disagree that mortgage servicers are required to make the contacts outlined in the MBA petition, we do disagree that these contacts are required to be made by robocalls. Indeed, the entire point of every single one of the requirements the MBA cites is for the servicer to talk to the homeowner to provide relevant information regarding foreclosure avoidance options available to this homeowner. The actual language of each of the requirements for servicers to contact homeowners shows that servicers are required to have conversations with them, to ask questions, and to provide responsive information. Robocalls are not conducive to those real exchanges of information.

We urge the Commission to reject the MBA petition completely. The MBA has not made a case for abandoning the TCPA's protections for these non-emergency calls. The MBA's members can and should either obtain homeowners' consent to receive robocalls on their cell phones, or simply have a real human manually dial homeowners in order to comply with their regulatory requirements to converse with homeowners.

5. **Reassigned Number Calls.** The question came up about whether the Commission should continue to deal with wrong number calls, and whether the rule in the 2015 Omnibus Order<sup>5</sup> limiting callers to one wrong number call still made sense. We urged that this limit be maintained as a way to pressure the calling industry to search for and participate in viable mechanisms to avoid all wrong number calls. To ease compliance with the requirement not to make robocalls to reassigned numbers, we urge the Commission to establish a mandatory

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[%20Broadnet.pdf](https://ecfsapi.fcc.gov/file/10829228610098/Final%20Broadnet%20Comments%20in%20Support%20of%20Petition%20.pdf). NCLC's Comments in Support of Reconsideration in furtherance of the Petition for Reconsideration, CG Docket No. 02-278 (filed Aug. 29, 2016) are available at <https://ecfsapi.fcc.gov/file/10829228610098/Final%20Broadnet%20Comments%20in%20Support%20of%20Petition%20.pdf>. NCLC's Reply Comments in furtherance of the Petition for Reconsideration, CG Docket No. 02-278 (filed Sept. 15, 2016) are available at <https://ecfsapi.fcc.gov/file/1091586742275/NCLC%20Broadnet%20Reply%20Comments%20Sept15.pdf>.

<sup>4</sup> NCLC's comments can be found in the Commission's electronic filing system here: [https://ecfsapi.fcc.gov/file/10826118922507/Comments%20to%20FCC%20Opposing%20MBA%20Petition%20on%20Robocalling%20\(8-26-2016\)-FINAL.pdf](https://ecfsapi.fcc.gov/file/10826118922507/Comments%20to%20FCC%20Opposing%20MBA%20Petition%20on%20Robocalling%20(8-26-2016)-FINAL.pdf).

<sup>5</sup> In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 30 FCC Rcd. 7961, 8006-8011 ¶¶ 85-93 (2015).

database, as was recently suggested in a Senate hearing on the TCPA.<sup>6</sup> A mandatory database would be a practical solution that would eliminate all excuses for making wrong-number robocalls and would be cheered by consumers nationwide. A database would be fully accurate and relatively inexpensive to operate and access by callers if it has the following components:

- a. All cell phone providers would participate by providing timely and regular information about the dates that cell phone numbers that change ownership;
- b. Callers could access the database easily online and simply ask: “For telephone number XYZ, when was the last time it changed ownership?”; and
- c. The fees charged to callers for accessing the information would pay for the maintenance of the database..

In support of all of these points, we provided the attached excerpt from an ongoing case against the student loan servicer, Navient, highlighting the need for the Commission to strictly limit autodialed calls. These excerpts document that Navient called this debtor—who was making payments on his student loans—over 700 times, over 525 of which were made after the debtor clearly stated that he wanted the calls to stop.

Additionally, we provided the illustration of the growth in the complaints made annually about robocalls to the Federal Trade Commission and the Federal Communications Commission (from a bit less than 2 million in 2014 to over 3.8 million in 2016). While the number of lawsuits relating to the TCPA has also grown during the same period, the total number of lawsuits still equals less than 1% of the total number of complaints.

If there are any questions, please contact Margot Saunders at the National Consumer Law Center (NCLC), [msaunders@nclc.org](mailto:msaunders@nclc.org) (202 452 6252, extension 104). This disclosure is made pursuant to 47 C.F.R. § 1.1206. Thank you very much.

Sincerely,

Margot Saunders  
Senior Counsel  
National Consumer Law Center  
1001 Connecticut Ave, NW  
Washington, D.C. 20036  
202 452 6252  
[msaunders@nclc.org](mailto:msaunders@nclc.org)  
[www.nclc.org](http://www.nclc.org)

Attachments: 4 pages

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<sup>6</sup> See Hearing on The Telephone Consumer Protection Act at 25: Effects on Consumers and Business Before the United States Senate Comm. on Commerce, Science and Transportation, 114th Cong., 2d Sess. (May 18, 2016) (statement of Monica Desai, Partner, Squire, Patton Boggs), *available at* [https://www.commerce.senate.gov/public/\\_cache/files/11ba8b7f-dea2-4c81-a515-7e312a50f40f/E74117FDEE42CEBCE9832497DF2AB5CB.monica-desai-testimony.pdf](https://www.commerce.senate.gov/public/_cache/files/11ba8b7f-dea2-4c81-a515-7e312a50f40f/E74117FDEE42CEBCE9832497DF2AB5CB.monica-desai-testimony.pdf). The suggestions were made by both by both the National Consumer Law Center and Monica Desai.